

has championed this resolution and is very grateful to the authors for introducing it and for this opportunity for us to recognize the 10th annual National Women's Health Week.

Mr. DINGELL. Mr. Speaker, I rise today in support of H. Con. Res. 120, a resolution supporting the goals and ideals of National Women's Health Week. Throughout my career as a member of Congress, I have consistently fought to ensure that all Americans have access to quality, affordable, and comprehensive health care. As a cosponsor of the Breast Cancer Patient Protection Act, a supporter of additional research on diseases that target women, and a longstanding advocate of securing health care for all women, I am pleased to support this resolution.

Women's health issues are of the utmost importance to me, and this resolution helps to promote awareness for healthy lifestyles and disease prevention for women. It is important to ensure that women both in Michigan's 15th District and across the United States understand the steps that can be taken to reduce the risk of disease, are aware of the disease disparities that exist among women from different backgrounds, and are exposed to healthy habits and key health issues from an early age. I understand that encouraging preventative care for women is important for reducing the cost of health care. As a longtime supporter of improvements to our Nation's health care system and increased research on women's health issues, I am pleased to support National Women's Health Week and to cosponsor H. Con. Res. 120.

Mrs. CAPPS. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from California (Mrs. CAPPS) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 120, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the concurrent resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

## PACT ACT

Mr. WEINER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1676) to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes, as amended.

The Clerk read the title of the bill.  
The text of the bill is as follows:

H.R. 1676

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.

(a) **SHORT TITLE.**—This Act may be cited as the "Prevent All Cigarette Trafficking Act of 2009" or "PACT Act".

(b) **FINDINGS.**—Congress finds that—

(1) the sale of illegal cigarettes and smokeless tobacco products significantly reduces Federal, State, and local government revenues, with Internet sales alone accounting for billions of dollars of lost Federal, State, and local tobacco tax revenue each year;

(2) Hezbollah, Hamas, al Qaeda, and other terrorist organizations have profited from

trafficking in illegal cigarettes or counterfeit cigarette tax stamps;

(3) terrorist involvement in illicit cigarette trafficking will continue to grow because of the large profits such organizations can earn;

(4) the sale of illegal cigarettes and smokeless tobacco over the Internet, and through mail, fax, or phone orders, makes it cheaper and easier for children to obtain tobacco products;

(5) the majority of Internet and other remote sales of cigarettes and smokeless tobacco are being made without adequate precautions to protect against sales to children, without the payment of applicable taxes, and without complying with the nominal registration and reporting requirements in existing Federal law;

(6) unfair competition from illegal sales of cigarettes and smokeless tobacco is taking billions of dollars of sales away from law-abiding retailers throughout the United States;

(7) with rising State and local tobacco tax rates, the incentives for the illegal sale of cigarettes and smokeless tobacco have increased;

(8) the number of active tobacco investigations being conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives rose to 452 in 2005;

(9) the number of Internet vendors in the United States and in foreign countries that sell cigarettes and smokeless tobacco to buyers in the United States increased from only about 40 in 2000 to more than 500 in 2005; and

(10) the intrastate sale of illegal cigarettes and smokeless tobacco over the Internet has a substantial effect on interstate commerce.

(c) **PURPOSES.**—It is the purpose of this Act to—

(1) require Internet and other remote sellers of cigarettes and smokeless tobacco to comply with the same laws that apply to law-abiding tobacco retailers;

(2) create strong disincentives to illegal smuggling of tobacco products;

(3) provide government enforcement officials with more effective enforcement tools to combat tobacco smuggling;

(4) make it more difficult for cigarette and smokeless tobacco traffickers to engage in and profit from their illegal activities;

(5) increase collections of Federal, State, and local excise taxes on cigarettes and smokeless tobacco; and

(6) prevent and reduce youth access to inexpensive cigarettes and smokeless tobacco through illegal Internet or contraband sales.

### SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKELESS TOBACCO TAXES.

(a) **DEFINITIONS.**—The Act of October 19, 1949 (15 U.S.C. 375 et seq.; commonly referred to as the "Jenkins Act") (referred to in this Act as the "Jenkins Act"), is amended by striking the first section and inserting the following:

#### "SECTION 1. DEFINITIONS.

"As used in this Act, the following definitions apply:

"(1) **ATTORNEY GENERAL.**—The term 'Attorney General' means the Attorney General of the United States.

"(2) **ATTORNEY GENERAL.**—The term 'attorney general', with respect to a State, means the attorney general or other chief law enforcement officer of the State.

"(3) **CIGARETTE.**—

"(A) **IN GENERAL.**—For purposes of this Act, the term 'cigarette' shall—

"(i) have the same meaning given that term in section 2341 of title 18, United States Code; and

"(ii) include 'roll-your-own tobacco' (as that term is defined in section 5702 of the Internal Revenue Code of 1986).

"(B) **EXCEPTION.**—For purposes of this Act, the term 'cigarette' does not include a 'cigar', as that term is defined in section 5702 of the Internal Revenue Code of 1986.

"(4) **COMMON CARRIER.**—The term 'common carrier' means any person (other than a local messenger service or the United States Postal Service) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.

"(5) **CONSUMER.**—The term 'consumer' means any person that purchases cigarettes or smokeless tobacco, but does not include any person lawfully operating as a manufacturer, distributor, wholesaler, or retailer of cigarettes or smokeless tobacco.

"(6) **DELIVERY SALE.**—The term 'delivery sale' means any sale of cigarettes or smokeless tobacco to a consumer if—

"(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

"(B) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

"(7) **DELIVERY SELLER.**—The term 'delivery seller' means a person who makes a delivery sale.

"(8) **INDIAN COUNTRY.**—The term 'Indian country' means—

"(A) Indian country as defined in section 1151 of title 18, United States Code, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve; and

"(B) any other land held by the United States in trust or restricted status for one or more Indian tribes.

"(9) **INDIAN TRIBE.**—The term 'Indian tribe', 'tribe', or 'tribal' refers to an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) or as listed pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1).

"(10) **INTERSTATE COMMERCE.**—The term 'interstate commerce' means commerce between a State and any place outside the State, commerce between a State and any Indian country in the State, or commerce between points in the same State but through any place outside the State or through any Indian country.

"(11) **INTO A STATE, PLACE, OR LOCALITY.**—A sale, shipment, or transfer of cigarettes or smokeless tobacco that is made in interstate commerce, as defined herein, shall be deemed to have been made into the State, place, or locality in which such cigarettes or smokeless tobacco are delivered.

"(12) **PERSON.**—The term 'person' means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such government, or joint stock company.

"(13) **STATE.**—The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

"(14) **SMOKELESS TOBACCO.**—The term 'smokeless tobacco' means any finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco, that is intended

to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

“(15) TOBACCO TAX ADMINISTRATOR.—The term ‘tobacco tax administrator’ means the State, local, or tribal official duly authorized to collect the tobacco tax or administer the tax law of a State, locality, or tribe, respectively.

“(16) TRIBAL ENTERPRISE.—The term ‘tribal enterprise’ means any business enterprise, incorporated or unincorporated under Federal or tribal law, of an Indian tribe or group of Indian tribe.

“(17) USE.—The term ‘use’, in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes or smokeless tobacco.”

(b) REPORTS TO STATE TOBACCO TAX ADMINISTRATORS.—Section 2 of the Jenkins Act (15 U.S.C. 376) is amended—

(1) by striking “cigarettes” each place it appears and inserting “cigarettes or smokeless tobacco”;

(2) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by inserting “CONTENTS.—” after “(a)”;

(ii) by striking “or transfers” and inserting “, transfers, or ships”;

(iii) by inserting “, locality, or Indian country of an Indian tribe” after “a State”;

(iv) by striking “to other than a distributor licensed by or located in such State.”; and

(v) by striking “or transfer and shipment” and inserting “, transfer, or shipment”;

(B) in paragraph (1)—

(i) by striking “with the tobacco tax administrator of the State” and inserting “with the Attorney General and with the tobacco tax administrators of the State and place”; and

(ii) by striking “; and” and inserting the following: “, as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of such person.”;

(C) in paragraph (2), by striking “and the quantity thereof,” and inserting “the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and”;

(D) by adding at the end the following:

“(3) with respect to each memorandum or invoice filed with a State under paragraph (2), also file copies of such memorandum or invoice with the tobacco tax administrators and chief law enforcement officers of the local governments and Indian tribes operating within the borders of the State that apply their own local or tribal taxes on cigarettes or smokeless tobacco.”;

(3) in subsection (b)—

(A) by inserting “PRESUMPTIVE EVIDENCE.—” after “(b)”;

(B) by striking “(1) that” and inserting “that”; and

(C) by striking “, and (2)” and all that follows and inserting a period; and

(4) by adding at the end the following:

“(c) USE OF INFORMATION.—A tobacco tax administrator or chief law enforcement officer who receives a memorandum or invoice under paragraph (2) or (3) of subsection (a) shall use such memorandum or invoice solely for the purposes of the enforcement of this Act and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco, and shall keep confidential any personal information in such memorandum or invoice except as required for such purposes.”.

(c) REQUIREMENTS FOR DELIVERY SALES.—The Jenkins Act is amended by inserting after section 2 the following:

**“SEC. 2A. DELIVERY SALES.**

“(a) IN GENERAL.—With respect to delivery sales into a specific State and place, each delivery seller shall comply with—

“(1) the shipping requirements set forth in subsection (b);

“(2) the recordkeeping requirements set forth in subsection (c);

“(3) all State, local, tribal, and other laws generally applicable to sales of cigarettes or smokeless tobacco as if such delivery sales occurred entirely within the specific State and place, including laws imposing—

“(A) excise taxes;

“(B) licensing and tax-stamping requirements;

“(C) restrictions on sales to minors; and

“(D) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco; and

“(4) the tax collection requirements set forth in subsection (d).

“(b) SHIPPING AND PACKAGING.—

“(1) REQUIRED STATEMENT.—For any shipping package containing cigarettes or smokeless tobacco, the delivery seller shall include on the bill of lading, if any, and on the outside of the shipping package, on the same surface as the delivery address, a clear and conspicuous statement providing as follows: ‘CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS’.

“(2) FAILURE TO LABEL.—Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as nondeliverable matter by a common carrier or other delivery service, if the common carrier or other delivery service knows or should know the package contains cigarettes or smokeless tobacco. If a common carrier or other delivery service believes a package is being submitted for delivery in violation of paragraph (1), it may require the person submitting the package for delivery to establish that it is not being sent in violation of paragraph (1) before accepting the package for delivery. Nothing in this paragraph shall require the common carrier or other delivery service to open any package to determine its contents.

“(3) WEIGHT RESTRICTION.—A delivery seller shall not sell, offer for sale, deliver, or cause to be delivered in any single sale or single delivery any cigarettes or smokeless tobacco weighing more than 10 pounds.

“(4) AGE VERIFICATION.—

“(A) IN GENERAL.—A delivery seller who mails or ships tobacco products—

“(i) shall not sell, deliver, or cause to be delivered any tobacco products to a person under the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery;

“(ii) shall use a method of mailing or shipping that requires—

“(I) the purchaser placing the delivery sale order, or an adult who is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery, to sign to accept delivery of the shipping container at the delivery address; and

“(II) the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or

purchase of tobacco products, as determined by the applicable law at the place of delivery; and

“(iii) shall not accept a delivery sale order from a person without—

“(I) obtaining the full name, birth date, and residential address of that person; and

“(II) verifying the information provided in subclause (I), through the use of a commercially available database or aggregate of databases, consisting primarily of data from government sources, that are regularly used by government and businesses for the purpose of age and identity verification and authentication, to ensure that the purchaser is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery.

“(B) LIMITATION.—No database being used for age and identity verification under subparagraph (A)(iii) shall be in the possession or under the control of the delivery seller, or be subject to any changes or supplementation by the delivery seller.

“(c) RECORDS.—

“(1) IN GENERAL.—Each delivery seller shall keep a record of any delivery sale, including all of the information described in section 2(a)(2), organized by the State, and within such State, by the city or town and by zip code, into which such delivery sale is so made.

“(2) RECORD RETENTION.—Records of a delivery sale shall be kept as described in paragraph (1) in the year in which the delivery sale is made and for the next 4 years.

“(3) ACCESS FOR OFFICIALS.—Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, to local governments and Indian tribes that apply their own local or tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States, to the chief law enforcement officers of such local governments and Indian tribes, and to the Attorney General in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

“(d) DELIVERY.—

“(1) IN GENERAL.—Except as provided in paragraph (2), no delivery seller may sell or deliver to any consumer, or tender to any common carrier or other delivery service, any cigarettes or smokeless tobacco pursuant to a delivery sale unless, in advance of the sale, delivery, or tender—

“(A) any cigarette or smokeless tobacco excise tax that is imposed by the State in which the cigarettes or smokeless tobacco are to be delivered has been paid to the State;

“(B) any cigarette or smokeless tobacco excise tax that is imposed by the local government of the place in which the cigarettes or smokeless tobacco are to be delivered has been paid to the local government; and

“(C) any required stamps or other indicia that such excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

“(2) EXCEPTION.—Paragraph (1) does not apply to a delivery sale of smokeless tobacco if the law of the State or local government of the place where the smokeless tobacco is to be delivered requires or otherwise provides that delivery sellers collect the excise tax from the consumer and remit the excise tax to the State or local government, and the delivery seller complies with the requirement.

“(e) LIST OF UNREGISTERED OR NONCOMPLIANT DELIVERY SELLERS.—

“(1) IN GENERAL.—

“(A) INITIAL LIST.—Not later than 90 days after this subsection goes into effect under the Prevent All Cigarette Trafficking Act of 2009, the Attorney General shall compile a list of delivery sellers of cigarettes or

smokeless tobacco that have not registered with the Attorney General pursuant to section 2(a), or that are otherwise not in compliance with this Act, and—

“(i) distribute the list to—

“(I) the attorney general and tax administrator of every State;

“(II) common carriers and other persons that deliver small packages to consumers in interstate commerce, including the United States Postal Service; and

“(III) any other persons who the Attorney General believes can promote the effective enforcement of this Act; and

“(ii) publicize and make the list available to any other person engaged in the business of interstate deliveries or who delivers cigarettes or smokeless tobacco in or into any State.

“(B) LIST CONTENTS.—To the extent known, the Attorney General shall include, for each delivery seller on the list described in subparagraph (A)—

“(i) all names the delivery seller uses or has used in the transaction of its business or on packages delivered to customers;

“(ii) all addresses from which the delivery seller does or has done business, or ships or has shipped cigarettes or smokeless tobacco;

“(iii) the website addresses, primary e-mail address, and phone number of the delivery seller; and

“(iv) any other information that the Attorney General determines would facilitate compliance with this subsection by recipients of the list.

“(C) UPDATING.—The Attorney General shall update and distribute the list at least once every 4 months, and may distribute the list and any updates by regular mail, electronic mail, or any other reasonable means, or by providing recipients with access to the list through a nonpublic website that the Attorney General regularly updates.

“(D) STATE, LOCAL, OR TRIBAL ADDITIONS.—The Attorney General shall include in the list under subparagraph (A) any noncomplying delivery sellers identified by any State, local, or tribal government under paragraph (5), and shall distribute the list to the attorney general or chief law enforcement official and the tax administrator of any government submitting any such information, and to any common carriers or other persons who deliver small packages to consumers identified by any government pursuant to paragraph (5).

“(E) ACCURACY AND COMPLETENESS OF LIST OF NONCOMPLYING DELIVERY SELLERS.—In preparing and revising the list required by subparagraph (A), the Attorney General shall—

“(i) use reasonable procedures to ensure maximum possible accuracy and completeness of the records and information relied on for the purpose of determining that such delivery seller is noncomplying;

“(ii) not later than 14 days prior to including any delivery seller on such list, make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on such list, with that notice citing the relevant provisions of this Act and the specific reasons for being placed on such list;

“(iii) provide an opportunity to such delivery seller to challenge placement on such list;

“(iv) investigate each such challenge by contacting the relevant Federal, State, tribal, and local law enforcement officials, and provide the specific findings and results of such investigation to such delivery seller not later than 30 days after the challenge is made; and

“(v) upon finding that any placement is inaccurate, incomplete, or cannot be verified, promptly delete such delivery seller from the list as appropriate and notify each appro-

priate Federal, State, tribal, and local authority of such finding.

“(F) CONFIDENTIALITY.—The list distributed pursuant to subparagraph (A) shall be confidential, and any person receiving the list shall maintain the confidentiality of the list but may deliver the list, for enforcement purposes, to any government official or to any common carrier or other person that delivers tobacco products or small packages to consumers. Nothing in this section shall prohibit a common carrier, the United States Postal Service, or any other person receiving the list from discussing with a listed delivery seller the delivery seller's inclusion on the list and the resulting effects on any services requested by such listed delivery seller.

“(2) PROHIBITION ON DELIVERY.—

“(A) IN GENERAL.—Commencing on the date that is 60 days after the date of the initial distribution or availability of the list under paragraph (1)(A), no person who receives the list under paragraph (1), and no person who delivers cigarettes or smokeless tobacco to consumers, shall knowingly complete, cause to be completed, or complete its portion of a delivery of any package for any person whose name and address are on the list, unless—

“(i) the person making the delivery knows or believes in good faith that the item does not include cigarettes or smokeless tobacco;

“(ii) the delivery is made to a person lawfully engaged in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

“(iii) the package being delivered weighs more than 100 pounds and the person making the delivery does not know or have reasonable cause to believe that the package contains cigarettes or smokeless tobacco.

“(B) IMPLEMENTATION OF UPDATES.—Commencing on the date that is 30 days after the date of the distribution or availability of any updates or corrections to the list under paragraph (1), all recipients and all common carriers or other persons that deliver cigarettes or smokeless tobacco to consumers shall be subject to subparagraph (A) in regard to such corrections or updates.

“(C) EXEMPTIONS.—Subparagraphs (A) and (B), subsection (b)(2), and any other requirements or restrictions placed directly on common carriers elsewhere in this subsection, shall not apply to a common carrier that is subject to a settlement agreement relating to tobacco product deliveries to consumers or, if any such settlement agreement to which the common carrier was a party is terminated or otherwise becomes inactive, is administering and enforcing, on a nationwide basis, policies and practices that are at least as stringent as any such agreement. For the purposes of this section, ‘settlement agreement’ shall be defined to include the Assurance of Discontinuance entered into by the Attorney General of New York and DHL Holdings USA, Inc. and DHL Express (USA), Inc. on or about July 1, 2005, the Assurance of Discontinuance entered into by the Attorney General of New York and United Parcel Service, Inc. on or about October 21, 2005, and the Assurance of Compliance entered into by the Attorney General of New York and Federal Express Corporation and FedEx Ground Package Systems, Inc. on or about February 3, 2006, so long as each is honored nationwide to block illegal deliveries of cigarettes or smokeless tobacco to consumers, and also includes any other active agreement between a common carrier and the States that operates nationwide to ensure that no deliveries of cigarettes and smokeless tobacco shall be made to consumers for illegally operating Internet or mail-order sellers and that any such deliveries to consumers shall not be made to minors or without payment to the States and localities where the consumers

are located of all taxes on the tobacco products.

“(3) SHIPMENTS FROM PERSONS ON LIST.—

“(A) IN GENERAL.—In the event that a common carrier or other delivery service delays or interrupts the delivery of a package it has in its possession because it determines or has reason to believe that the person ordering the delivery is on a list distributed under paragraph (1), and that clauses (i)(ii), and (iii) of paragraph (2)(a) do not apply.—

“(i) the person ordering the delivery shall be obligated to pay—

“(I) the common carrier or other delivery service as if the delivery of the package had been timely completed; and

“(II) if the package is not deliverable, any reasonable additional fee or charge levied by the common carrier or other delivery service to cover its extra costs and inconvenience and to serve as a disincentive against such noncomplying delivery orders; and

“(ii) if the package is determined not to be deliverable, the common carrier or other delivery service shall offer to provide the package and its contents to a Federal, State, or local law enforcement agency.

“(B) RECORDS.—A common carrier or other delivery service shall maintain, for a period of 5 years, any records kept in the ordinary course of business relating to any deliveries interrupted pursuant to this paragraph and provide that information, upon request, to the Attorney General or to the attorney general or chief law enforcement official or tax administrator of any State, local, or tribal government.

“(C) CONFIDENTIALITY.—Any person receiving records under subparagraph (B) shall use such records solely for the purposes of the enforcement of this Act and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco, and shall keep confidential any personal information in such records not otherwise required for such purposes.

“(4) PREEMPTION.—

“(A) IN GENERAL.—No State, local, or tribal government, nor any political authority of 2 or more State, local, or tribal governments, may enact or enforce any law or regulation relating to delivery sales that restricts deliveries of cigarettes or smokeless tobacco to consumers by common carriers or other delivery services on behalf of delivery sellers by—

“(i) requiring that the common carrier or other delivery service verify the age or identity of the consumer accepting the delivery by requiring the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that such person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by either State or local law at the place of delivery;

“(ii) requiring that the common carrier or other delivery service obtain a signature from the consumer accepting the delivery;

“(iii) requiring that the common carrier or other delivery service verify that all applicable taxes have been paid;

“(iv) requiring that packages delivered by the common carrier or other delivery service contain any particular labels, notice, or markings; or

“(v) prohibiting common carriers or other delivery services from making deliveries on the basis of whether the delivery seller is or is not identified on any list of delivery sellers maintained and distributed by any entity other than the Federal Government.

“(B) RELATIONSHIP TO OTHER LAWS.—Except as provided in subparagraph (C), nothing in this paragraph shall be construed to nullify,

expand, restrict, or otherwise amend or modify—

“(i) section 14501(c)(1) or 41713(b)(4) of title 49, United States Code;

“(ii) any other restrictions in Federal law on the ability of State, local, or tribal governments to regulate common carriers; or

“(iii) any provision of State, local, or tribal law regulating common carriers that is described in section 14501(c)(2) or 41713(b)(4)(B) of title 49 of the United States Code.

“(C) STATE LAWS PROHIBITING DELIVERY SALES.—Nothing in the Prevent All Cigarette Trafficking Act of 2009, the amendments made by that Act, or in any other Federal statute shall be construed to preempt, supersede, or otherwise limit or restrict State laws prohibiting the delivery sale, or the shipment or delivery pursuant to a delivery sale, of cigarettes or other tobacco products to individual consumers or personal residences except that no State may enforce against a common carrier a law prohibiting the delivery of cigarettes or other tobacco products to individual consumers or personal residences without proof that the common carrier is not exempt under paragraph (2)(C) of this subsection.

“(5) STATE, LOCAL, AND TRIBAL ADDITIONS.—

“(A) IN GENERAL.—Any State, local, or tribal government shall provide the Attorney General with—

“(i) all known names, addresses, website addresses, and other primary contact information of any delivery seller that offers for sale or makes sales of cigarettes or smokeless tobacco in or into the State, locality, or tribal land involved, but has failed to register with or make reports to the respective tax administrator as required by this Act, or that has been found in a legal proceeding to have otherwise failed to comply with this Act; and

“(ii) a list of common carriers and other persons who make deliveries of cigarettes or smokeless tobacco in or into the State, locality, or tribal land.

“(B) UPDATES.—Any government providing a list to the Attorney General under subparagraph (A) shall also provide updates and corrections every 4 months until such time as such government notifies the Attorney General in writing that such government no longer desires to submit such information to supplement the list maintained and distributed by the Attorney General under paragraph (1).

“(C) REMOVAL AFTER WITHDRAWAL.—Upon receiving written notice that a government no longer desires to submit information under subparagraph (A), the Attorney General shall remove from the list compiled under paragraph (1) any persons that are on the list solely because of such government's prior submissions of its list of noncomplying delivery sellers of cigarettes or smokeless tobacco or its subsequent updates and corrections.

“(6) DEADLINE TO INCORPORATE ADDITIONS.—The Attorney General shall—

“(A) include any delivery seller identified and submitted by a State, local, or tribal government under paragraph (5) in any list or update that is distributed or made available under paragraph (1) on or after the date that is 30 days after the date on which the information is received by the Attorney General; and

“(B) distribute any such list or update to any common carrier or other person who makes deliveries of cigarettes or smokeless tobacco that has been identified and submitted by a government pursuant to paragraph (5).

“(7) NOTICE TO DELIVERY SELLERS.—Not later than 14 days prior to including any delivery seller on the initial list distributed or

made available under paragraph (1), or on any subsequent list or update for the first time, the Attorney General shall make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on such list or update, with that notice citing the relevant provisions of this Act.

“(8) LIMITATIONS.—

“(A) IN GENERAL.—Any common carrier or other person making a delivery subject to this subsection shall not be required or otherwise obligated to—

“(i) determine whether any list distributed or made available under paragraph (1) is complete, accurate, or up-to-date;

“(ii) determine whether a person ordering a delivery is in compliance with this Act; or

“(iii) open or inspect, pursuant to this Act, any package being delivered to determine its contents.

“(B) ALTERNATE NAMES.—Any common carrier or other person making a delivery subject to this subsection shall not be required to make any inquiries or otherwise determine whether a person ordering a delivery is a delivery seller on the list under paragraph (1) who is using a different name or address in order to evade the related delivery restrictions, but shall not knowingly deliver any packages to consumers for any such delivery seller who the common carrier or other delivery service knows is a delivery seller who is on the list under paragraph (1) but is using a different name or address to evade the delivery restrictions of paragraph (2).

“(C) PENALTIES.—Any common carrier or person in the business of delivering packages on behalf of other persons shall not be subject to any penalty under section 14101(a) of title 49, United States Code, or any other provision of law for—

“(i) not making any specific delivery, or any deliveries at all, on behalf of any person on the list under paragraph (1);

“(ii) refusing, as a matter of regular practice and procedure, to make any deliveries, or any deliveries in certain States, of any cigarettes or smokeless tobacco for any person or for any person not in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

“(iii) delaying or not making a delivery for any person because of reasonable efforts to comply with this Act.

“(D) OTHER LIMITS.—Section 2 and subsections (a), (b), (c), and (d) of this section shall not be interpreted to impose any responsibilities, requirements, or liability on common carriers.

“(f) PRESUMPTION.—For purposes of this Act, a delivery sale shall be deemed to have occurred in the State and place where the buyer obtains personal possession of the cigarettes or smokeless tobacco, and a delivery pursuant to a delivery sale is deemed to have been initiated or ordered by the delivery seller.”

(d) PENALTIES.—The Jenkins Act is amended by striking section 3 and inserting the following:

#### “SEC. 3. PENALTIES.

“(a) CRIMINAL PENALTIES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), whoever knowingly violates any provision of this Act shall be guilty of a felony and shall be imprisoned not more than 3 years, fined under title 18, United States Code, or both.

“(2) EXCEPTIONS.—

“(A) GOVERNMENTS.—Paragraph (1) shall not apply to a State, local, or tribal government.

“(B) DELIVERY VIOLATIONS.—A common carrier or independent delivery service, or employee of a common carrier or inde-

pendent delivery service, shall be subject to criminal penalties under paragraph (1) for a violation of section 2A(e) only if the violation is committed knowingly—

“(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

“(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 2A.

“(b) CIVIL PENALTIES.—

“(1) IN GENERAL.—Except as provided in paragraph (3), whoever violates any provision of this Act shall be subject to a civil penalty in an amount not to exceed—

“(A) in the case of a delivery seller, the greater of—

“(i) \$5,000 in the case of the first violation, or \$10,000 for any other violation; or

“(ii) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of such person during the 1-year period ending on the date of the violation.

“(B) in the case of a common carrier or other delivery service, \$2,500 in the case of a first violation, or \$5,000 for any violation within 1 year of a prior violation.

“(2) RELATION TO OTHER PENALTIES.—A civil penalty imposed under paragraph (1) for a violation of this Act shall be imposed in addition to any criminal penalty under subsection (a) and any other damages, equitable relief, or injunctive relief awarded by the court, including the payment of any unpaid taxes to the appropriate Federal, State, local, or tribal governments.

“(3) EXCEPTIONS.—

“(A) DELIVERY VIOLATIONS.—An employee of a common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 2A(e) only if the violation is committed intentionally—

“(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

“(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 2A.

“(B) OTHER LIMITATIONS.—No common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 2A(e) if—

“(i) the common carrier or independent delivery service has implemented and enforces effective policies and practices for complying with that section; or

“(ii) the violation consists of an employee of the common carrier or independent delivery service who physically receives and processes orders, picks up packages, processes packages, or makes deliveries, taking actions that are outside the scope of employment of the employee, or that violate the implemented and enforced policies of the common carrier or independent delivery service described in clause (i).”

(e) ENFORCEMENT.—The Jenkins Act is amended by striking section 4 and inserting the following:

#### “SEC. 4. ENFORCEMENT.

“(a) IN GENERAL.—The United States district courts shall have jurisdiction to prevent and restrain violations of this Act and to provide other appropriate injunctive or equitable relief, including money damages, for such violations.

“(b) AUTHORITY OF THE ATTORNEY GENERAL.—The Attorney General shall administer and enforce the provisions of this Act.

“(c) STATE, LOCAL, AND TRIBAL ENFORCEMENT.—

“(1) IN GENERAL.—

“(A) STANDING.—A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement

officer, may bring an action in a United States district court to prevent and restrain violations of this Act by any person or to obtain any other appropriate relief from any person for violations of this Act, including civil penalties, money damages, and injunctive or other equitable relief.

“(B) SOVEREIGN IMMUNITY.—Nothing in this Act shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian tribe against any unconscionable lawsuit under this Act, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian tribe.

“(2) PROVISION OF INFORMATION.—A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement officer, may provide evidence of a violation of this Act by any person not subject to State, local, or tribal government enforcement actions for violations of this Act to the Attorney General or a United States attorney, who shall take appropriate actions to enforce the provisions of this Act.

“(3) USE OF PENALTIES COLLECTED.—

“(A) IN GENERAL.—There is established a separate account in the Treasury known as the ‘PACT Anti-Trafficking Fund’. Notwithstanding any other provision of law and subject to subparagraph (B), an amount equal to 50 percent of any criminal and civil penalties collected by the United States Government in enforcing the provisions of this Act shall be transferred into the PACT Anti-Trafficking Fund and shall be available to the Attorney General for purposes of enforcing the provisions of this Act and other laws relating to contraband tobacco products.

“(B) ALLOCATION OF FUNDS.—Of the amount available to the Attorney General under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department of Justice that were responsible for the enforcement actions in which the penalties concerned were imposed or for any underlying investigations.

“(4) NONEXCLUSIVITY OF REMEDY.—

“(A) IN GENERAL.—The remedies available under this section and section 3 are in addition to any other remedies available under Federal, State, local, tribal, or other law.

“(B) STATE COURT PROCEEDINGS.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

“(C) TRIBAL COURT PROCEEDINGS.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized Indian tribal government official to proceed in tribal court, or take other enforcement actions, on the basis of an alleged violation of tribal law.

“(D) LOCAL GOVERNMENT ENFORCEMENT.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.

“(d) PERSONS DEALING IN TOBACCO PRODUCTS.—Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 (regarding permitting of manufacturers and importers of tobacco products and export warehouse proprietors) may bring an action in an appropriate United States district court to prevent and restrain violations of this Act by any person other than a State, local, or tribal government.

“(e) NOTICE.—

“(1) PERSONS DEALING IN TOBACCO PRODUCTS.—Any person who commences a civil action under subsection (d) shall inform the Attorney General of the action.

“(2) STATE, LOCAL, AND TRIBAL ACTIONS.—It is the sense of Congress that the attorney general of any State, or chief law enforcement officer of any locality or tribe, that commences a civil action under this section should inform the Attorney General of the action.

“(f) PUBLIC NOTICE.—

“(1) IN GENERAL.—The Attorney General shall make available to the public, by posting such information on the Internet and by other appropriate means, information regarding all enforcement actions brought by the United States, or reported to the Attorney General, under this section, including information regarding the resolution of such actions and how the Attorney General has responded to referrals of evidence of violations pursuant to subsection (c)(2).

“(2) REPORTS TO CONGRESS.—The Attorney General shall submit to Congress, one year after the date of the enactment of the Prevent All Cigarette Trafficking Act of 2009, at the end of each of the four succeeding 1-year periods, a report containing the information described in paragraph (1).”

### SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TOBACCO AS NONMAILABLE MATTER.

(a) IN GENERAL.—Chapter 83 of title 18, United States Code, is amended by inserting after section 1716D the following:

#### “§ 1716E. Tobacco products as nonmailable

“(a) PROHIBITION.—All cigarettes and smokeless tobacco (as those terms are defined in section 1 of the Act of October 19, 1949, commonly referred to as the Jenkins Act) are nonmailable and shall not be deposited in or carried through the mails. The United States Postal Service shall not accept for delivery or transmit through the mails any package that it knows or has reasonable cause to believe contains any cigarettes or smokeless tobacco made nonmailable by this subsection. For the purposes of subsection (a) reasonable cause includes—

“(1) a statement on a publicly available website, or an advertisement, by any person that such person will mail matter which is nonmailable under this section in return for payment; or

“(2) the placement of the person on the list created under section 2A(e) of the Jenkins Act.

“(b) EXCEPTIONS.—This section shall not apply to the following:

“(1) CIGARS.—Cigars (as that term is defined in section 5702(a) of the Internal Revenue Code of 1986).

“(2) GEOGRAPHIC EXCEPTION.—Mailings within the State of Alaska or within the State of Hawaii.

“(3) BUSINESS PURPOSES.—Tobacco products mailed only for business purposes between legally operating businesses that have all applicable State and Federal Government licenses or permits and are engaged in tobacco product manufacturing, distribution, wholesale, export, import, testing, investigation, or research, or for regulatory purposes between any such businesses and State or Federal Government regulatory agencies, pursuant to a final rule that the Postal Service shall issue, not later than 180 days after the date of the enactment of the Prevent All Cigarette Trafficking Act of 2009, which shall establish the standards and requirements that apply to all such mailings, which shall include the following:

“(A) The Postal Service shall verify that any person submitting an otherwise nonmailable tobacco product into the mails as

authorized by this paragraph is a business or government agency permitted to make such mailings pursuant to this section and the related final rule.

“(B) The Postal Service shall ensure that any recipient of an otherwise nonmailable tobacco product sent through the mails pursuant to this paragraph is a business or government agency that may lawfully receive such product.

“(C) The mailings shall be sent through the Postal Service's systems that provide for the tracking and confirmation of the delivery.

“(D) The identities of the business or government entity submitting the mailing containing otherwise nonmailable tobacco products for delivery and the business or government entity receiving the mailing shall be clearly set forth on the package and such information shall be kept in Postal Service records and made available to the Postal Service, the Attorney General, and to persons eligible to bring enforcement actions pursuant to section 3(d) of the Prevent All Cigarette Trafficking Act of 2009 for a period of at least three years thereafter.

“(E) The mailings shall be marked with a Postal Service label or marking that makes it clear to Postal Service employees that it is a permitted mailing of otherwise nonmailable tobacco products that may be delivered only to a permitted government agency or business and may not be delivered to any residence or individual person.

“(F) The mailing shall be delivered only to a verified adult employee of the recipient business or government agency, who shall be required to sign for the mailing.

“(4) CERTAIN INDIVIDUALS.—Tobacco products mailed by adult individuals for non-commercial purposes, including the return of a damaged or unacceptable tobacco product to its manufacturer, pursuant to a final rule that the Postal Service shall issue, not later than 180 days after the date of the enactment of the Prevent All Cigarette Trafficking Act of 2009, which shall establish the standards and requirements that apply to all such mailings, which shall include the following:

“(A) The Postal Service shall verify that any person submitting an otherwise nonmailable tobacco product into the mails as authorized by this section is the individual identified on the return address label of the package and is an adult.

“(B) For a mailing to an individual, the Postal Service shall require the person submitting the otherwise nonmailable tobacco product into the mails as authorized by this subsection to affirm that the recipient is an adult.

“(C) The package shall not weigh more than 10 ounces.

“(D) The mailing shall be sent through the Postal Service's systems that provide for the tracking and confirmation of the delivery.

“(E) No package shall be delivered or placed in the possession of any individual who is not a verified adult. For a mailing to an individual, the Postal Service shall deliver the package only to the verified adult recipient at the recipient address or transfer it for delivery to an Air/Army Postal Office (APO) or Fleet Postal Office (FPO) number designated in the recipient address.

“(F) No person shall initiate more than ten such mailings in any thirty-day period.

“(5) EXCEPTION FOR MAILINGS FOR CONSUMER TESTING BY MANUFACTURERS.—Subject to paragraph (8), nothing in this Act shall preclude a legally operating cigarette manufacturer operating on its own or through its legally authorized agent from using the Postal Service to mail cigarettes to verified adult smokers solely for consumer testing purposes, provided that—

“(A) the cigarette manufacturer has a federal permit, in good standing, pursuant to section 5713 of the Internal Revenue Code of 1986;

“(B) any package of cigarettes mailed pursuant to this paragraph shall contain no more than 12 packs of cigarettes (240 cigarettes);

“(C) no individual shall receive more than 1 package of cigarettes per manufacturer pursuant to this paragraph in any 30-day period;

“(D) all taxes on the cigarettes levied by the State and locality of delivery have been paid to the State and locality prior to delivery, and tax stamps or other tax-payment indicia have been affixed to the cigarettes as required by law;

“(E)(i) the recipient has not made any payments of any kind in exchange for receiving the cigarettes;

“(ii) the recipient is paid a fee by the manufacturer or manufacturer's agent for participation in consumer product tests; and

“(iii) the recipient, in connection with the tests, evaluates the cigarettes and provides feedback to the manufacturer or agent;

“(F) the mailing is made pursuant to a final rule that the Postal Service shall issue, not later than 180 days after the date of the enactment of the Prevent All Cigarette Trafficking Act of 2009, which shall establish standards and requirements that apply to all such mailings, which shall include the following:

“(i) The Postal Service shall verify that any person submitting a tobacco product into the mails pursuant to this paragraph is a manufacturer permitted to make such mailings pursuant to this paragraph, or an agent legally authorized by the manufacturer to submit the tobacco product into the mails on the manufacturer's behalf.

“(ii) The Postal Service shall require the manufacturer submitting the cigarettes into the mails pursuant to this paragraph to affirm that the manufacturer or its legally authorized agent has verified that the recipient is an adult established smoker who has not made any payment for the cigarettes, has formally stated in writing that he or she wishes to receive such mailings, and has not withdrawn that agreement despite being offered the opportunity to do so by the manufacturer or its legally authorized agent at least once in every 3-month period.

“(iii) The Postal Service shall require the manufacturer or its legally authorized agent submitting the cigarettes into the mails pursuant to this paragraph to affirm that the package contains no more than 12 packs of cigarettes (240 cigarettes) on which all taxes levied on the cigarettes by the State and locality of delivery have been paid and all related State tax stamps or other tax-payment indicia have been applied.

“(iv) The mailings shall be sent through the Postal Service's systems that provide for the tracking and confirmation of the delivery and all related records shall be kept in Postal Service records and made available to persons enforcing this section for a period of at least 3 years thereafter.

“(v) The mailing shall be marked with a Postal Service label or marking that makes it clear to Postal Service employees that it is a permitted mailing of otherwise non-mailable tobacco products that may be delivered only to the named recipient after verifying that the recipient is an adult.

“(vi) The Postal Service shall deliver the mailing only to the named recipient and only after verifying that the recipient is an adult.

“(6) DEFINITION OF CONSUMER TESTING.—For purposes of this Act, the term ‘consumer testing’ means testing limited to formal data collection and analysis for the specific pur-

pose of evaluating the product for quality assurance and benchmarking purposes of cigarette brands or sub-brands among existing adult smokers.

“(7) DEFINITION OF ADULT.—For purposes of paragraph (5), the term ‘adult’ means an individual of at least 21 years of age. For purposes of paragraphs (3) and (4), the term ‘adult’ means an individual of at least the minimum age required for the legal sale or purchase of tobacco products as determined by applicable law at the place the individual is located.

“(8) LIMITATIONS.—Paragraph (5) shall not—

“(A) permit a mailing of cigarettes to an individual located in any State that prohibits the delivery or shipment of cigarettes to individuals in the State, or preempt, limit, or otherwise affect any related State laws; or

“(B) permit a manufacturer, directly or through a legally authorized agent, to mail cigarettes in any calendar years in a cumulative amount greater than one percent of its total cigarette sales in the United States in the previous calendar year.

“(9) UNITED STATES GOVERNMENT AGENCIES.—Agencies of the United States Government involved in the consumer testing of tobacco products solely for public health purposes may make mailings pursuant to the same requirements, restrictions, and Postal Service rules and procedures that apply to consumer testing mailings of cigarettes by manufacturers under paragraph (5), except that no such agency shall be required to pay the recipients for participating in the consumer testing.

“(c) SEIZURE AND FORFEITURE.—Any cigarettes or smokeless tobacco made non-mailable by this subsection that are deposited in the mails shall be subject to seizure and forfeiture, pursuant to the procedures set forth in chapter 46 of this title. Any tobacco products so seized and forfeited shall either be destroyed or retained by Government officials for the detection or prosecution of crimes or related investigations and then destroyed.

“(d) ADDITIONAL PENALTIES.—In addition to any other fines and penalties imposed by this Act for violations of this section, any person violating this section shall be subject to an additional civil penalty in the amount of 10 times the retail value of the non-mailable cigarettes or smokeless tobacco, including all Federal, State, and local taxes.

“(e) CRIMINAL PENALTY.—Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything that this section declares to be non-mailable matter shall be fined under this title, imprisoned not more than 1 year, or both.

“(f) DEFINITION.—As used in this section, the term ‘State’ has the meaning given that term in section 1716(k).

“(g) USE OF PENALTIES.—There is established a separate account in the Treasury of the United States, to be known as the ‘PACT Postal Service Fund’. Notwithstanding any other provision of law, an amount equal to 50 percent of any criminal and civil fines or monetary penalties collected by the United States Government in enforcing the provisions of this subsection shall be transferred into the PACT Postal Service Fund and shall be available to the Postmaster General for the purpose of enforcing the provisions of this subsection.

“(h) COORDINATION OF EFFORTS.—In the enforcement of this section, the Postal Service shall cooperate and coordinate its efforts with related enforcement activities of any

other Federal agency or of any State, local, or tribal government, whenever appropriate.”.

(b) ACTIONS BY STATE, LOCAL OR TRIBAL GOVERNMENTS RELATING TO CERTAIN TOBACCO PRODUCTS.—

(1) A State, through its attorney general, or a local government or Indian tribe that levies an excise tax on tobacco products, through its chief law enforcement officer, may in a civil action in a United States district court obtain appropriate relief with respect to a violation of section 1716E of title 18, United States Code. Appropriate relief includes injunctive and equitable relief and damages equal to the amount of unpaid taxes on tobacco products mailed in violation of that section to addressees in that State.

(2) Nothing in this section shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian tribe against any unconsented lawsuit under paragraph (1), or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian tribe.

(3) Nothing in this section shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(4) A State, through its attorney general, or a local government or Indian tribe that levies an excise tax on tobacco products, through its chief law enforcement officer, may provide evidence of a violation of paragraph (1) for commercial purposes by any person not subject to State, local, or tribal government enforcement actions for violations of paragraph (1) to the Attorney General, who shall take appropriate actions to enforce the provisions of this subsection.

(5) The remedies available under this subsection are in addition to any other remedies available under Federal, State, local, tribal, or other law. Nothing in this subsection shall be construed to expand, restrict, or otherwise modify any right of an authorized State, local, or tribal government official to proceed in a State, tribal, or other appropriate court, or take other enforcement actions, on the basis of an alleged violation of State, local, tribal, or other law.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 83 of title 18 is amended by adding after the item relating to section 1716D the following new item:

“1716E. Tobacco products as nonmailable.”.

#### SEC. 4. COMPLIANCE WITH MODEL STATUTE OR QUALIFYING STATUTE.

(a) IN GENERAL.—A Tobacco Product Manufacturer or importer may not sell in, deliver to, or place for delivery sale, or cause to be sold in, delivered to, or placed for delivery sale in a State that is a party to the Master Settlement Agreement, any cigarette manufactured by a Tobacco Product Manufacturer that is not in full compliance with the terms of the Model Statute or Qualifying Statute enacted by such State requiring funds to be placed into a qualified escrow account under specified conditions, and with any regulations promulgated pursuant to such statute.

(b) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—

(1) IN GENERAL.—The United States district courts shall have jurisdiction to prevent and restrain violations of subsection (a) in accordance with this subsection.

(2) INITIATION OF ACTION.—A State, through its attorney general, may bring an action in an appropriate United States district court to prevent and restrain violations of subsection (a) by any person.

(3) ATTORNEY FEES.—In any action under paragraph (2), a State, through its attorney



general, shall be entitled to reasonable attorney fees from a person found to have knowingly violated subsection (a).

(4) **NONEXCLUSIVITY OF REMEDIES.**—The remedy available under paragraph (2) is in addition to any other remedies available under Federal, State, or other law. No provision of this Act or any other Federal law shall be held or construed to prohibit or preempt the Master Settlement Agreement, the Model Statute (as defined in the Master Settlement Agreement), any legislation amending or complementary to the Model Statute in effect as of June 1, 2006, or any legislation substantially similar to such existing, amending, or complementary legislation hereinafter enacted.

(5) **OTHER ENFORCEMENT ACTIONS.**—Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court or taking other enforcement actions on the basis of an alleged violation of State or other law.

(6) **AUTHORITY OF THE ATTORNEY GENERAL.**—The Attorney General may bring an action in an appropriate United States district court to prevent and restrain violations of subsection (a) by any person.

(c) **DEFINITIONS.**—In this section the following definitions apply:

(1) **DELIVERY SALE.**—The term “delivery sale” means any sale of cigarettes or smokeless tobacco to a consumer if—

(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

(B) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

(2) **IMPORTER.**—The term “importer” means each of the following:

(A) **SHIPPING OR CONSIGNING.**—Any person in the United States to whom nontaxpaid tobacco products manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned.

(B) **MANUFACTURING WAREHOUSES.**—Any person who removes cigars or cigarettes for sale or consumption in the United States from a customs-bonded manufacturing warehouse.

(C) **UNLAWFUL IMPORTING.**—Any person who smuggles or otherwise unlawfully brings tobacco products into the United States.

(3) **MASTER SETTLEMENT AGREEMENT.**—The term “Master Settlement Agreement” means the agreement executed November 23, 1998, between the attorneys general of 46 States, the District of Columbia, the Commonwealth of Puerto Rico, and 4 territories of the United States and certain tobacco manufacturers.

(4) **MODEL STATUTE; QUALIFYING STATUTE.**—The terms “Model Statute” and “Qualifying Statute” means a statute as defined in section IX(d)(2)(e) of the Master Settlement Agreement.

(5) **TOBACCO PRODUCT MANUFACTURER.**—The term “Tobacco Product Manufacturer” has the meaning given that term in section II(uu) of the Master Settlement Agreement.

#### **SEC. 5. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO SELLERS; CIVIL PENALTY.**

Section 2343(c) of title 18, United States Code, is amended to read as follows:

“(c)(1) Any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, during normal business hours, enter the premises of any person described in subsection (a) or (b) for the purposes of inspecting—

“(A) any records or information required to be maintained by such person under the provisions of law referred to in this chapter; or

“(B) any cigarettes or smokeless tobacco kept or stored by such person at such premises.

“(2) The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by paragraph (1).

“(3) Whoever denies access to an officer under paragraph (1), or who fails to comply with an order issued under paragraph (2), shall be subject to a civil penalty in an amount not to exceed \$10,000.”

#### **SEC. 6. EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS.**

(a) **IN GENERAL.**—Nothing in this Act or the amendments made by this Act shall be construed to amend, modify, or otherwise affect—

(1) any agreements, compacts, or other intergovernmental arrangements between any State or local government and any government of an Indian tribe (as that term is defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) relating to the collection of taxes on cigarettes or smokeless tobacco sold in Indian country;

(2) any State laws that authorize or otherwise pertain to any such intergovernmental arrangements or create special rules or procedures for the collection of State, local, or tribal taxes on cigarettes or smokeless tobacco sold in Indian country;

(3) any limitations under Federal or State law, including Federal common law and treaties, on State, local, and tribal tax and regulatory authority with respect to the sale, use, or distribution of cigarettes and smokeless tobacco by or to Indian tribes, tribal members, tribal enterprises, or in Indian country;

(4) any Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any tribe, tribal members, tribal enterprises, tribal reservations, or other lands held by the United States in trust for one or more Indian tribes; and

(5) any State or local government authority to bring enforcement actions against persons located in Indian country.

(b) **COORDINATION OF LAW ENFORCEMENT.**—Nothing in this Act or the amendments made by this Act shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by 1 or more States or other jurisdictions, including Indian tribes, through interstate compact or otherwise, that—

(1) provides for the administration of tobacco product laws or laws pertaining to interstate sales or other sales of tobacco products;

(2) provides for the seizure of tobacco products or other property related to a violation of such laws; or

(3) establishes cooperative programs for the administration of such laws.

(c) **TREATMENT OF STATE AND LOCAL GOVERNMENTS.**—Nothing in this Act or the amendments made by this Act shall be construed to authorize, deputize, or commission States or local governments as instrumentalities of the United States.

(d) **ENFORCEMENT WITHIN INDIAN COUNTRY.**—Nothing in this Act or the amendments made by this Act shall prohibit, limit, or restrict enforcement by the Attorney

General of the provisions herein within Indian country.

(e) **AMBIGUITY.**—Any ambiguity between the language of this section or its application and any other provision of this Act shall be resolved in favor of this section.

#### **SEC. 7. ENHANCED CONTRABAND TOBACCO ENFORCEMENT.**

(a) **REQUIREMENTS.**—The Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives shall—

(1) create 6 regional contraband tobacco trafficking teams over a 3-year period in New York City, Washington DC, Detroit, Los Angeles, Seattle, and Miami,

(2) create a new Tobacco Intelligence Center to oversee investigations and monitor and coordinate ongoing investigations and to serve as a nerve center for all ongoing tobacco diversion investigations within the Bureau of Alcohol, Tobacco, Firearms, and Explosives, in the United States and, where applicable, with law enforcement organizations around the world,

(3) establish a covert national warehouse for undercover operations, and

(4) create a computer database that will track and analyze information from retail sellers of tobacco products that sell through the Internet or by mail order or make other non-face-to-face sales.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out subsection (a) \$8,500,000 for each of the 5 fiscal years beginning with fiscal year 2010.

#### **SEC. 8. EFFECTIVE DATE.**

(a) **IN GENERAL.**—Except as provided in subsection (b), this Act shall take effect on the date that is 90 days after the date of enactment of this Act.

(b) **BATFE AUTHORITY.**—Section 5 shall take effect on the date of enactment of this Act.

#### **SEC. 9. SEVERABILITY.**

If any provision of this Act, or any amendment made by this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of the Act to any other person or circumstance shall not be affected thereby.

#### **SEC. 10. SENSE OF CONGRESS CONCERNING THE PRECEDENTIAL EFFECT OF THIS ACT.**

It is the sense of Congress that unique harms are associated with online cigarette sales, including problems with verifying the ages of consumers in the digital market and the long-term health problems associated with the use of certain tobacco products. This Act was enacted recognizing the longstanding interest of Congress in urging compliance with States' laws regulating remote sales of certain tobacco products to citizens of those States, including the passage of the Jenkins Act over 50 years ago, which established reporting requirements for out-of-State companies that sell certain tobacco products to citizens of the taxing States, and which gave authority to the Department of Justice and the Bureau of Alcohol, Tobacco, Firearms, and Explosives to enforce the Jenkins Act. In light of the unique harms and circumstances surrounding the online sale of certain tobacco products, this Act is intended to help collect cigarette excise taxes, to stop tobacco sales to underage youth, and to help the States enforce their laws that target the online sales of certain tobacco products only. This Act is in no way meant to create a precedent regarding the collection of State sales or use taxes by, or the validity of efforts to impose other types of taxes on, out-of-State entities that do not have a physical presence within the taxing State.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New York (Mr. WEINER) and the gentleman from Texas (Mr. POE) each will control 20 minutes.

The Chair recognizes the gentleman from New York.

GENERAL LEAVE

Mr. WEINER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. WEINER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as States and localities face increasing pressure on their budgets around the country, there is one source of revenue that not only raises money for those localities but also performs an important health function, and that is to provide taxation on packs of cigarettes. The taxation varies dramatically from State to State, and, frankly, in New York State we have the highest State tax in the Nation, \$2.75 a pack, and the highest local tax as well. We have a \$4.25 per pack. In some places it's much lower.

But every State in the union has some taxation that they put on their tobacco products, and it is collected, by and large, by wholesalers that put a tax stamp on. Most citizens, when they go out and purchase their cigarettes, do so legally, pay the tax, and there is no problem.

However, as the taxes have gone up, we have unwittingly created a large and growing black market for smuggled tobacco products. And this legislation, which has bipartisan support in the Judiciary Committee and in this House, seeks to solve that problem. It does so in a number of ways.

One, it makes it much more difficult for someone to sell tobacco over the Internet. Right now, UPS, DHL, the common carriers all are under agreement that they, themselves, are saying, We are not going to ship tobacco across the Internet because too often it's used as a way to avoid paying the taxes. There is one common carrier, the Postal Service, which still permits it. That is the carrier of choice for the overwhelming number of illegally smuggled cigarettes. And, frankly, the Postal Service has said, Congress, if you want us not to ship those cigarettes, you've got to tell us in a law that you want us not to. That's what we are doing today.

Also, it increases the penalties under the Jenkins Act. If someone is going to seek to avoid paying tobacco taxes, violating the Jenkins Act is going to be a felony under this act. It is going to make it a requirement that sellers of Internet tobacco verify the purchaser's age and identify them through easily accessible databases, which is, in many cases, going to put some of these

Internet tobacco carriers out of business.

This is not only a matter of revenue, though, Mr. Speaker. This is also the source for a black market that has emerged that, according to the GAO, has allowed organizations as nefarious as Hezbollah to make the money on the float: buying tobacco, say, in South Carolina, driving it to Michigan, taking money that they saved by not charging people the tax, and taking that money and exporting it to fund terrorist activities. That is not a hypothetical. That's something that the GAO actually found to have happened.

So I urge my colleagues to support this. This has broad support. We have worked very hard, that even organizations as disparate as the wholesale marketers, Phillip Morris, the National Association of Attorneys General, Lorillard, and the Campaign for Tobacco-Free Kids, all are supporters of the PACT Act.

I reserve the balance of my time.

Mr. POE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to thank my colleague and friend on the Judiciary Committee, Mr. WEINER, for introducing H.R. 1676, the Prevent All Cigarette Trafficking or PACT Act. This bipartisan legislation will help Federal, State, and local law enforcement officials combat cigarette smuggling and trafficking in the United States.

Tobacco smuggling has become one of the most prevalent forms of smuggling in recent years in our country. Its effects are not felt only in the United States but other parts of the world as well.

The World Health Organization estimates that illegal cigarettes account for 10.7 percent, or approximately 600 billion cigarettes, of the more than 5.7 trillion cigarettes sold globally each year.

According to a study by the World Bank, cigarettes are appealing to smugglers because taxes typically account for a large portion of the price, making it highly profitable to traffic them for resale at a reduced price.

Tobacco smuggling traditionally involves the diversion of large quantities of cigarettes from wholesale distribution into the black market. This typically occurs during the transit of the cigarettes, thus allowing the traffickers to avoid most, if not all, taxes that will be imposed at retail on the cigarettes.

The profits from tobacco trafficking can be and likely are used to finance other illegal activities such as organized crime and drug trafficking syndicates. In addition to the sale of smuggled tobacco on the black market, it deprives States of significant amounts of tax revenue every year.

Over the last 15 years, cigarette taxes have increased more than 65 percent throughout the United States; yet, during this same time, States' tax revenues increased by only 35 percent.

California officials estimate that taxes are unpaid on about 15 percent of all tobacco sold in its markets at a cost of \$276 million every year. In a recently released study, the State of New York put its losses at more than \$576 million per year.

The State of Texas raised cigarette taxes recently, and this increase is supposed to generate an additional \$800 million in revenue for the State.

This bill would help to ensure that States like California, New York, and Texas receive or recover tax revenue that is due them by people who buy cigarettes.

Two senior ranking members of the Judiciary Committee, Ranking Member SMITH and Mr. WEINER, have teamed together to cosponsor the PACT Act for the second consecutive Congress.

In the 110th Congress, this House passed similar legislation on a suspension calendar; however, our colleagues in the Senate did not ever take up the bill.

H.R. 1676 varies slightly from the previous legislation passed by the 110th Congress. Provisions that were under the jurisdiction of the Oversight and Government Reform Committee have been removed.

This bill also contains an authorization for additional funding for anticigarette trafficking efforts for the Bureau of Alcohol, Tobacco, Firearms and Explosives.

This bipartisan legislation closes loopholes in current tobacco trafficking laws, provides law enforcement with new tools to combat innovative methods being used by the cigarette traffickers to distribute their products, and bolsters the States' ability to enforce State law.

I urge all my colleagues to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. WEINER. I thank the gentleman for his leadership on this and so many issues on the Judiciary Committee.

It is indeed the fact that a lot of these Web sites continue to exist because they provide delivery by the United States Postal Service. The irony here is that UPS, FedEx, DHL, the big carriers have entered into an agreement with the State of New York that they are now following in all 50 States that they won't transport those tobacco products because there is a reasonable expectation that these Web sites are operating, and often brag about the idea that, if you go shopping for tobacco on the Internet, you're not going to have to pay the taxes.

□ 1330

Well, we need to stop that activity. You can be against the high taxes in some States, or in favor of them. I think that the States, in their sovereign responsibility, have the right to come up with their own levels of taxation. But I think that we should all be able to agree that right now there is a



giant truck-sized loophole that exists in the law that allows many people to avoid paying the taxes and allows the funds to go to nefarious hands.

According to the GAO, Hezbollah raised \$1.5 million from the sale of illegal tobacco in the 5 years 1996 through 2000. The largest case that they found was that millions of dollars of cigarettes were smuggled to Michigan from North Carolina in 1996—seized cigarettes and property and currency worth \$2 million and proceeds that had been transferred to Beirut.

But it's more obviously often smaller bore problems that have been created as well; that if you have people who are increasingly seeking, because of the large amount of taxation that there is on many of these products, a lot of the programs in our States that are funded theoretically from the tax revenues from tobacco are seeing shortfalls. In fact, we're reaching a point now where the rising tobacco tax rights are producing less revenue in some States.

Some people thump their chest and say, Isn't that great. We have less smoking. But if you look at the back end, you see that the wholesalers and the manufacturers are still sending the same number of cigarettes out; we're just not collecting the revenues for it.

I want to offer my gratitude to Mr. SCOTT for his chairmanship on the Crime Subcommittee, through which the bill passed. I also want to express gratitude to many members of the staff who have worked to make not only the bill work, but also the compromises and changes that we made.

Mr. COBLE, for example, was concerned that we wanted to allow some of the smaller test brands to be able to be sent out so market research could be done. We accommodated those concerns. And I think his staff was very, very helpful.

If the Speaker will indulge me, I want to mention some of them by name: Perry Apfelbaum of the Judiciary Committee; and Ameer Gopalani, Jesselyn McCurdy, Kimani Little and Caroline Lynch of the Subcommittee on Crime, Terrorism, and Homeland Security; John Mautz of Congressman COBLE's staff; and Joseph Dunn of my staff.

Also, some of the folks in the private sector who helped us craft this bill in a way that doesn't impact legitimate operators: Artie Katz, Lenny Schwartz, and Steve Rosenthal with the New York Association of Wholesale Marketers, who helped enlighten the committee on how the process actually worked; John Hoel and Sarah Knakmuhs with Altria; Eric Lindblom with the Campaign for Tobacco Free Kids; Anne Holloway with the American Wholesale Marketers Association; Lynn Beckwith with the National Association of Convenience Stores; and Laurie McKay with Dickstein Shapiro.

Mr. Speaker, I reserve the balance of my time.

Mr. POE of Texas. Mr. Speaker, this bill has nothing to do with whether

cigarettes should be taxed or not, whether tobacco should be taxed or not. The issue is the black market sale of cigarettes and those individuals who fail to pay lawfully imposed taxes on them.

This legislation is supported by the tobacco industry and by law enforcement, the Attorney General, and I urge the adoption of this legislation.

I yield back the balance of my time. Mr. WEINER. I thank Mr. POE again, and I just want to make one other point: that there are colleagues on other committees who have had an interest in this, and they have been working hand-in-hand with the Judiciary Committee.

I will insert an exchange of letters with one of those committees, the Oversight and Reform Committee, at this point in the RECORD.

HOUSE OF REPRESENTATIVES, COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,

Washington, DC, May 19, 2009.

Hon. JOHN CONYERS, JR.,  
Chairman, Committee on the Judiciary, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN CONYERS: I am writing about H.R. 1676, the "Prevent All Cigarette Trafficking Act of 2009." The Judiciary Committee ordered this measure reported, as amended, on April 28, 2009.

I appreciate your efforts to consult with the Committee on Oversight and Government Reform regarding those provisions of H.R. 1676 that fall within the Oversight Committee's jurisdiction. These provisions relate to the treatment of cigarettes and smokeless tobacco as nonmailable matter and new requirements which will be placed on the U.S. Postal Service as a result.

In the interest of expediting consideration of H.R. 1676, the Oversight Committee will not separately consider relevant provisions of this bill. I would, however, request your support for the appointment of conferees from the Oversight Committee should H.R. 1676 or a similar Senate bill be considered in conference with the Senate. Moreover, this letter should not be construed as a waiver of the Oversight Committee's legislative jurisdiction over subjects addressed in H.R. 1676 that fall within the jurisdiction of the Oversight Committee.

Please include our exchange of letters on this matter in the Congressional Record during consideration of this legislation on the House floor.

Again, I appreciate your willingness to consult the Committee on these matters.

Sincerely,

EDOLPHUS TOWNS,  
Chairman.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC, May 19, 2009.

Hon. EDOLPHUS TOWNS,  
Chairman, Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding your committee's jurisdictional interest in H.R. 1676, the Prevent All Cigarette Trafficking Act of 2009.

I appreciate your willingness to support expediting floor consideration of this important legislation today. I understand and agree that this is without prejudice to your Committee's jurisdictional interests in this or similar legislation in the future. In the event a House-Senate conference on this or

similar legislation is convened, I would support your request for an appropriate number of conferees.

I will include a copy of your letter and this response in the Congressional Record in the debate on the bill. Thank you for your cooperation as we work towards enactment of this legislation.

Sincerely,

JOHN CONYERS, JR.,  
Chairman.

I urge support for the bill, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. WEINER) that the House suspend the rules and pass the bill, H.R. 1676, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. POE of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

#### HONORING POLICE OFFICERS AND LAW ENFORCEMENT PROFESSIONALS DURING POLICE WEEK

Mr. SCOTT of Virginia. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 426) honoring police officers and law enforcement professionals during Police Week.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

#### H. RES. 426

Whereas President John F. Kennedy signed a proclamation declaring May 15th as Peace Officers Memorial Day to honor law enforcement officers killed in the line of duty, and to designate the calendar week in which May 15th occurs as Police Week;

Whereas police officers protect communities across our Nation;

Whereas police officers selflessly put their lives on the line to keep Americans safe;

Whereas police officers perform a variety of duties to pursue justice and maintain public safety;

Whereas in just the last decade, hundreds of police officers were killed in the line of duty, and in just the first four months of 2009 more than 40 officers around the country have made the ultimate sacrifice; and

Whereas police officers and law enforcement personnel have been adversely affected by the current economic situation, yet continue to serve bravely: Now, therefore, be it Resolved, That—

(1) it is the sense of the House of Representatives that—

(A) Police Week provides an opportunity to honor police officers and law enforcement personnel for their selfless acts of bravery;

(B) police officers and law enforcement personnel risk their lives daily to protect Americans; and

(C) police officers and law enforcement personnel who have made the ultimate sacrifice should be remembered and honored;

(2) the House of Representatives honors police officers for their efforts to create safer and more secure communities; and